

## EXCERPT OF THE CODE OF THE TOWN OF ANDOVER



### Article X1 Section 9, Outdoor dining.

(a) Outdoor dining licenses.

(1) Purpose, scope, authority. The purpose of this bylaw is to provide for the licensing of outdoor dining areas of appropriate design, configuration, and appearance that will be an amenity to the Town during the spring, summer and fall. The Board of Selectmen may issue annual outdoor dining licenses which shall be for the period from April 1 to October 31. Licenses shall be valid for one season and must be reapplied for annually.

(2) Conditions of the license. The Board of Selectmen shall impose such conditions on each license as the Board determines to be appropriate and in the best interest of the Town. License fees shall be established by the Board of Selectmen. The Board of Selectmen may also make such regulations governing outdoor dining licenses as the Board considers to be necessary or appropriate to carry out the purposes of this bylaw.

(3) Design and appearance.

a. Outdoor dining areas containing nine or more seats shall be separated from their surroundings by a perimeter fence or barrier. No such fences or barriers may damage the public sidewalk. Perimeter treatments, umbrellas, furniture and trash receptacles shall be supplied by the applicant and shall be maintained in a safe and sanitary manner by the applicant. All trash receptacles shall be covered and trash removed nightly. All perimeter treatments, umbrellas, furniture and trash receptacles must be removed at the end of each season.

b. All furniture must be secured during the hours it is not in use.

**Amended 10/7/09 Special Town Meeting**

(4) Pedestrian and wheelchair passage. In no event shall the placement of outdoor dining furniture, umbrellas, perimeter fences or barriers create a pedestrian or wheelchair passage width of less than four feet. Restaurants shall have an accessible path of travel through the dining area at least 36 inches wide.

(5) Outdoor food preparation shall not be allowed unless approved by the Board of Health in accordance with their procedures and regulations.

(6) Other licenses and approvals. Approval of an outdoor dining area license shall not be construed as an approval of any other license or an approval for the alteration or extension of

premises where alcoholic beverages are served. The serving or consumption of alcohol outside of premises duly licensed to serve alcohol is expressly forbidden unless approved by the Board of Selectmen.

(7) Temporary seating. Due to the seasonal and temporary nature of an outdoor dining area, the seating within an outdoor dining area will not be considered an increase in the number of seats serving a restaurant or eating establishment and will not be counted toward any off-street parking requirement.

(b) Submission and approval of application.

(1) Filing procedure. Application for outdoor dining licenses shall be made to the Board of Selectmen, and a copy shall be submitted to the Board of Health and Public Safety Officer for their review. When located within the General Business and Mixed Use Zoning Districts, the applicant shall consult with the Design Review Board prior to seeking a license. Each application will include the name, address and telephone number of the restaurant owner, the proposed dates and times of operation, and a plan meeting the requirements of Section (2) below.

(2) Plan requirements. A neatly drawn scaled plan and seven copies shall be submitted with the application depicting the precise dimensions and location of the outdoor dining area; the arrangement of outdoor dining furniture, perimeter fencing, umbrellas, and any other obstruction; and the width of sidewalk available for pedestrian and wheelchair passage. The plan will also include a written description of the colors and materials to be used in the outdoor dining area. Photographs or samples of proposed furniture and materials shall be provided upon request of the Board of Selectmen or Design Review Board.

(3) Insurance. The licensee shall carry or require that there be carried workers' compensation insurance for all employees and those of its contractors and/or subcontractors engaged in work at the dining facility, in accordance with the state workers' compensation laws. The licensee shall, prior to the issuance of the license, furnish a certificate of insurance to the Town evidencing coverage for workers' compensation insurance. In addition, the licensee shall carry comprehensive public liability and property damage liability insurance and, if applicable, liquor liability insurance, to cover the licensee and its contractors and subcontractors against claims due to accidents which may occur or result from operations under the license. Such insurance shall cover the use of all equipment related to the provision of sidewalk dining services. The comprehensive general liability policy shall insure against all claims and demands for bodily injury and property damage with respect to the sidewalk dining facilities and services and shall be in such form and amount as determined by the Board of Selectmen. The Town shall be named as an "additional insured" in all policies for such insurance. The licensee (and their heirs, successors and assigns in interest) shall also agree to hold harmless, defend and indemnify the Town of Andover and its employees and agents from any responsibility, liability and claims arising out of or related to the operations under the license. Where such insurance is renewed or replaced, the licensee shall furnish the Town with a certificate of insurance evidencing the same.

(4) Approval.

a. The Board of Selectmen may approve an outdoor dining license after determining that the design and location of an outdoor dining area is suitable to its environs and that all other requirements of the license have been met. The Board of Selectmen shall consider any comments made by the Board of Health, Safety Officer or Design Review Board prior to rendering a decision.

b. Upon approval of an outdoor dining area license by the Board of Selectmen, the owner and operator of the restaurant and the Board of Selectmen shall sign a license agreement prepared for these purposes by Town Counsel and shall pay any applicable license fee prior to the commencement of any activities under the license.

(c) Severability.

(1) If any provisions, paragraphs, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.